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**Report on Legislative Changes Recommended  
for the Customs Law of Jordan**

Final Report  
February 2005

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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## **Abstract**

The AMIR Program has made many recommendations for change to the Customs Law of Jordan. Some of these recommendations have been acted upon by Jordan Customs and included in draft legislative amendments proposed to go to the National Parliament. Other recommendations have not yet been acted upon.

This report:

- Comments on the amendments proposed by Customs to see if they will satisfy the recommendations.
- Identifies those areas where there has not yet been draft legislation prepared.
- Proposes changes to the Law to meet those missing areas.
- Develops a complete set of proposed legislative changes for consideration by Customs.

The report is based on the author's research and more importantly on a three-day workshop held in Amman on 9, 14 and 15 February 2005 and attended by senior legal and policy officers from Jordan Customs.

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## **Executive Summary**

Since 2002, there have been a number of reports written by consultants examining different aspects of the Customs Law, practice and procedure of Jordan Customs. These various reports have made recommendations for changes to the Customs Law of Jordan.

To give effect to some of these recommendations, Jordan Customs Legal Department has prepared a number of amendments to the Law to go the Parliament in 2005. The purpose of this paper is to examine the extent to which these amendments will achieve the outcomes intended by the writers of the reports, to identify any areas where recommendations have not been adequately addressed by the proposed changes, and to compile a complete list of amendments required to implement recommendations.

This work was undertaken by the consultant in two phases; the first involving the consultant's own examination of the legislation proposed and analysis of the various reports and the second involving a three-day workshop with staff from Jordan Customs who were directly involved in the preparation of the amendments.

Altogether, the following areas were identified as requiring legislative review:

- Electronic commerce and digital signature
- Reduced documentary requirements
- Pre-clearance
- Post transaction audit
- Brokers
- Customs bonds
- Voluntary disclosure and prior disclosure
- Joint and several liability
- Binding Rulings
- Penalties
- Due diligence

These issues were examined in the workshop held on 8, 14 and 15 February 2005 in Amman. Some issues had been included in draft legislation proposed by Customs. Other issues were discussed without the benefit of draft legislation to follow. The issues included in the legislation were:

- the documents which constituted the declaration
- due diligence, post-transaction audit and “gold list” arrangements
- pre-clearance
- exemptions
- brokers
- penalties
- joint and several liability.

In summary I welcome all of the changes proposed by Customs as far as they go, because they will advance Customs capability to deal with traders and brokers in a self-assessment context, particularly if the traders have been rated as “gold list” members.

Customs has made real progress towards identifying and drafting the changes necessary to give effect to AMIR Program recommendations. However, there are some additional changes to be made as well. In short, it is recommended as follows:

- That Article 31 be amended to allow for declarations to be actioned without invoices being presented in certain circumstances
- That Article 84 be amended to enable Customs to apply post transaction audit to “gold list” companies
- That Article 84 also be amended to provide for voluntary disclosure
- That a new article be added to the Law to allow for binding rulings
- That Article 148 be amended to allow for pre-clearance and for reduced documentary requirements for “gold list” companies
- That amendments be made as required to provide for customs bonds as an alternative to cash securities or bank guarantees
- That Articles 166, 168 and 169 be amended to impose stricter requirements on clearance agents (brokers)
- That “reserved seizure” be introduced as proposed by Customs to assist with anti-smuggling
- That the penalties provisions be strengthened as proposed by Customs.
- That the other changes proposed by Customs be endorsed by the AMIR Program as contributing to an improved Customs Law.

## **Introduction**

The current Customs Law of Jordan (Law No. 20 of 1998) has been in force since 2000. In the last three years, there have been several reports written on behalf of the AMIR Program that recommend change to the law to accommodate new customs policies and procedures. It is important that the law continues to be modernized to give effect to the reform program being undertaken by Customs. While some changes can be introduced either without changing the law, or by means of subordinate legislation, some changes need to be made to the law itself.

The purpose of this report is to identify the changes that need to be made and to provide a comprehensive list of proposed amendments. The report has been written on the basis of my own interpretation of the (unofficial) English language translation of the law as it appears on the Jordan Customs web site and on the basis of the conclusions reached by a working group of senior Customs and AMIR personnel which met in Amman on 9, 14 and 15 February, 2005. The purpose of the workshop was to finalize the amendments that need to be made to the Customs Law on the basis of expert advice from Customs staff involved in managing the legislative change.

The workshop considered a number of amendments to the law that had been prepared by Jordan Customs in 2004 to give effect to some of the recommendations and to “fix” some matters in the law which Customs had identified as requiring amendment. The result of the consideration of these amendments is set out in the following section of this report (Part A).

The workshop considered a number of reports to see what was needed to be done to give effect to the recommendations that they proposed. These reports are summarized in Part B of this report, together with the conclusions reached by the workshop in relation to each report.

Part C contains a detailed matrix of changes proposed to the law. The implementation of this matrix would provide a considerably improved legislative basis for the introduction of the reforms proposed by the AMIR Program.



## **Part A. Review of Customs Report**

The Customs Department has produced a report that identifies changes that it wishes to make to the Customs Law. This report was in the form of a matrix identifying the articles to be amended, the original text, the proposed text, and the reasons for the change. The original report has been incorporated into this report as the basis for the matrix in Part C below. The report was also the starting point for discussion in the working group.

The following articles have been identified in the report as requiring amendment: 2, 13, 31, 40, 84, 105, 148, 149, 166, 168, 169, 191, 198, 199, 200, 203, 204, 206, 208, 213, 218, 222. Some of these proposals pick up recommendations from AMIR Program reports discussed below, while other proposals can best be described as “housekeeping”.

The amendments proposed by Customs are detailed in the matrix. The “housekeeping amendments” relate to Articles 13, 40, 105, 149, 208 and 222. (My comments on those changes are included in the right-hand column in Part C).

In summary the most significant amendments are as follows:

Article 2 has been amended to change the definition of a “declaration” to exclude the supporting documents. This solves an existing legal conundrum which arises under the penalties provisions of Article 200, which requires that penalties be imposed if the supporting documents are inconsistent with the declaration. This cannot easily be done if the supporting documents are, in law, part of the declaration.

It is also a significant amendment because it will assist the lodgement of declarations without the supporting documents necessarily being attached (although other changes are also necessary for this to happen).

Article 31 has been amended to remove the requirement that an invoice must be certified before it can be submitted with the declaration. The amendment provides that the Director may issue instructions as to the requirements of the invoice. This is both an important facilitation measure and a result of Jordan’s membership of the World Trade Organization (WTO). The change has been made to Article 13, paragraph C.

The wording of paragraphs D and E is also important. Paragraph D allows for goods to be released without the invoice being submitted and on payment of a security. Even more importantly, paragraph E allows the goods to be released without invoice or security in certain circumstances lay down by the Director. These circumstances are described in Instruction #2 of 1999. At present, the circumstances envisaged relate to low value goods imported through the mail and so on. However, paragraph E would provide a head of power for Customs to exclude the need for an invoice to be lodged with an electronic declaration. At present, one of the problems with the law is that even with an electronic declaration there is a continuing requirement that supporting documents, including the invoice, be lodged manually. (This does not assist facilitation at all, and is an unnecessary control measure.) Paragraph E as drafted could therefore achieve one of the main aims of

the AMIR procedural reform if Instruction #2 were amended to exclude the need for invoices to be lodged with electronic declarations, and, eventually, to obviate the need for invoices to be lodged altogether.

The provision relates to invoices only and does not deal with the issue of the other supporting documents currently required. There is a continuing need to reduce these requirements, and that should be considered as part of the arrangements for “golden list” traders (see below).

Article 84 has been amended by the inclusion of a new paragraph B. This is a particularly important amendment as it is designed to create the basis for due diligence, or a “gold list” of companies which have been credited with a high level of compliance and therefore are seen to qualify for less intrusive customs processing. Paragraph B creates a head of power which enables the Director to issue instructions under which this facility will be given, and also provides for penalties to apply if there is a breach of the conditions by the company concerned. These companies will be subject to post transaction audit under Article 184 of the Customs Law (in other words, they will not be subject to inspection of goods and documents at the time of importation). This is an important step towards a wider program of facilitation based on post-transaction audit. At this stage, it is capable of providing that level of service to specified companies, but in the long run there is no reason why the Director’s instructions could not extend that level of facilitation to more and more companies. (In developed economies, this form of processing is the norm for all companies, and that should be the goal for Jordan as well).

Article 148 allows the Minister to make instructions excluding the requirement that goods be examined on clearance. This is an important provision, providing a power to assist facilitation. The amendment proposed to Article 148, through the inclusion of a new paragraph B, is very significant, as it will establish the basis for the pre-clearance of goods. The Article effectively provides for the lodgement of declarations, the collection of duties and the clearance of goods before their arrival in the Kingdom. It also provides a general head of power for the issuing of instructions to give effect to pre-clearance procedures (and to detail procedures in the event that pre-cleared goods do not arrive in the Kingdom). (Other changes to Article 148 are discussed in Part B below).

Articles 166, 168 and 169 propose a number of changes in relation to clearance agents (customs brokers). This is an area that has been commented on in my reports and in the earlier report prepared by Bert Cunningham. We both have felt that there need to be greater powers in Customs to require a higher level of professionalism from brokers if a true self-assessment environment is to be created. The amendment to Article 166 requires brokers to achieve the general secondary certificate, but I query whether this is enough, when compared with the qualifications required in other countries (which are usually tertiary level certificates). Customs has the power to require brokers to pass an exam and has the right to deny licences to new brokers if they do not meet requirements, but there is nothing that requires brokers to achieve a high level of qualification or to maintain their competency levels once licensed. It is essentially a matter of policy whether these levels are high enough, but if policy is to change, then the law will also need to change.

Article 168 has been amended to allow for the suspension of a broker pending a court decision in relation to charges of smuggling, forgery or “manipulation” of a customs declaration and for having his licence revoked if convicted of such an offence. The amendments to Article 169 are not greatly significant.

While these amendments are a step in the right direction, particularly in relation to the grounds for suspension and revocation of a licence, I would like to see the qualifications for becoming a broker lifted, and a requirement for continuing professional development of brokers.

(See also Article 218 below.)

Article 191 provides an important addition to the powers of Customs in relation to criminal activity. It provides the Minister with the power to seize the property of a person suspected of engaging in smuggling pending the hearing of the case. This is important because it will enable Customs to prevent a person disposing of assets as a means of avoiding paying any penalty imposed by the court.

Articles 198, 199, 200, 203, 204, and 206 (which are all penalties provisions) have all been amended in ways designed to strengthen the penalties (a longstanding desire on the part of several consultants).

A new paragraph is added to Article 198, penalizing the unauthorised changing of the status of transit and export goods, and Article 199, paragraph W, is amended to include a failure to report export cargo accurately in an export declaration.

Paragraph (a) of Article 200 is amended to cover the situation where the declaration is inconsistent with the invoice or certificate of origin (see the amendment to Article 2 above). (Note that the penalty here still appears to be very minor and not an adequate deterrent, being pitched at between 25 and 100 JD.)

Article 203 has been amended by the addition of a series of offences from Article 204, which has the effect, when combined with the amendments proposed to Article 206, of making them punishable by imprisonment and/or a fine. They are said to be “real” smuggling crimes rather than “judgmental” smuggling crimes, and a sentence of imprisonment cannot be substituted by a lesser penalty. These provisions make offences which otherwise greatly weaken Customs control subject to much stronger sanctions, and will assist Customs to clamp down strongly on smugglers.

In addition, three new offences have been added to Article 204, and to the definition of smuggling. They are subject to the penalty provisions in Paragraph B of the amended Article 206. These offences relate to mislabeling of goods as being of Jordanian origin, dealing with goods before analysis or specification results received, and wrongful claim for exemption from duty.

Article 206 is strengthened to make sure that penalties for smuggling are not diluted, that higher fines can be levied, and that recidivists receive maximum penalties. These revised penalties apply to both Articles 203 and 204, and will have the effect of increasing substantially the deterrent effect of penalties as well as their immediate punitive effect. This is important as an effective penalty regime is a prerequisite for a self-assessment, post-transaction audit approach to compliance.

Article 213 provides an alternative to Article 206, in that it provides for amicable settlement of a customs claim (a practice which is consistent with the Kyoto Convention). The changes to Article 213 are essentially minor, dealing with recidivists and with valuing means of transport for compensation purposes, but it is important that the Article be retained to provide Customs with greater flexibility in dealing with non-compliant traders.

Article 218 provides that a clearance agent is to be held liable for the offences committed by his employees. This strengthens the law as it applies to brokers, because it means that they are expressly liable for smuggling offences, and not just of misdeclaration, where their employee has been acting unlawfully (previously, it was up to a court to determine whether the broker was liable in those circumstances). This clearly poses a higher legal duty on the broker to ensure that his staff acts in accordance with the Law. (See also comments below on joint and several liability.)

In summary I welcome all of the changes proposed by Customs as far as they go, because they will advance Customs capability to deal with traders and brokers in a self-assessment context, particularly if the traders have been rated as “gold list” members.

The workshop also accepted that there were other changes that would assist this process and contribute to a more facilitative and sophisticated Customs Department. These are considered in the following part.

## **Part B: Review of Other Reports**

The workshop then examined the recommendations of the other reports that have also proposed legislative changes. The notes below are a summary of the contents of the reports and the conclusions/recommendations reached by the working group as to how to give effect to them. These recommendations have been incorporated into the matrix in Part C to supplement the changes already proposed by Customs and to provide a complete picture of the legislative amendments which this report recommends.

### **a. Voluntary Disclosure and Joint and Severable Liability, prepared by IBLAW, December 2003**

This report looks at the extent to which the existing Customs Law allows an importer to make a voluntary disclosure if they discover that they have lodged a declaration containing false information. It also looks at the extent to which importers, exporters, brokers and others can be joint and severably liable for offences under the Customs Law. (There are also recommendations in a report from Dr. Mohammad Tarawneh relating to prior disclosure. These have been considered in the text that resulted from the discussion on voluntary disclosure. While the two concepts are slightly different, the working group felt that voluntary disclosure was the preferred approach).

#### ***Voluntary disclosure***

The report concludes that the Customs Law does not currently permit a person to make a voluntary disclosure of an error made by them in the clearance process and subsequently discovered before Customs has taken any compliance action in relation to the transaction. Legislative change is required to the Customs Law for this to happen. Article 270 of the Civil Code in fact works against voluntary disclosure being allowed.

The report notes Articles 78, 80, 82, 84, 188, 194 of the Customs Law, all of which lead to the conclusion that the law does not allow voluntary disclosure. Amicable settlement is seen as a partial alternative, but it does not provide for the declarant to make the approach. Amicable settlement depends upon the detection by Customs of an offence.

The report recommends amending the Customs Law to allow for voluntary disclosure by including the following principles:

- The declaration needs to be made as part of a process of self-assessment
- The declarant should notify customs that an error has been made in the declaration
- The notification must be made within a certain period of the declaration having been made (e.g. 12 months)
- The notification must be made before Customs notifies the declarant of an intention to audit the declarant's transactions (i.e. the declarant's notification must be entirely spontaneous)

- Any duty short paid must be paid within a certain number of working days of the disclosure being made.

The workshop considered this issue at some length and reached the following conclusions:

- Add a new paragraph D to Article 84 providing that the declarant may, on a voluntary basis, declare to Customs changes in the Customs declaration after it is processed, provided that the Customs Department has not taken any procedures towards audit or investigation or announced its intention to do so
- Under D, disclosure should be submitted under this paragraph in writing, with relevant documents and details regarding the violation attached
- Customs and other taxes will be collected upon disclosure, without penalty
- That will not prevent Customs from conducting post auditing of the person making the disclosure.

This was seen as enhancing the development of trust between declarant and customs, enhancing partnership with the private sector and saving customs staff effort. This would enable them to focus on non-compliant traders and guarantee government revenues with less costs and effort.

Article 212 also needs to be amended to ensure that no penalty applies in the case of voluntary disclosure.

### ***Joint and severable liability***

Articles 82, 215, 216, 217, 218, 219, 220, 221 establish clear principles in relation to joint and several liability. The report concludes that there is no need to change the Law here. This was also the view of the working group. As a result, no amendments are proposed in this regard.

### **b. Report on Digital Signature, prepared by IBLAW, June 2004**

This report concentrates on administrative options available to Customs under the national E-Transactions Law. These include:

- Improved use of the Cases database
- Electronic duty payments
- On-line registration

These are already allowable under the E-Transactions Law. There is no recommendation in this report for legislative change.

However, there is a broader question at issue still – and that is whether the Customs Law and other national laws adequately cover the issue of electronic communications between Customs and those persons using electronic means to communicate with Customs. The

view of the workshop was that this is a complex issue but that the combination of the Customs Law, the Electronic Transactions Law and the Law on data holdings provide the necessary legal platform for electronic communications to and from Customs. The participants were also aware that there is discussion in Parliament at present of these issues, and it was felt that the Customs Law should not be changed at this time.

(The issue of electronic communications is also discussed in the report on due diligence which is summarised below and in the Harrison report on legislation strategy. My own view is that the national Electronic Transactions Law establishes a very sound platform for Customs to accept electronic declarations and other communications from traders. To the extent that Customs specific circumstance may need to be met – such as legislation detailing Customs’ responsibility to provide EDI systems or other means of communication - those can be established as and when required by subordinate legislation or by instruction from Customs.)

**c. A Legislation Strategy for Jordan Customs, prepared by Mark Harrison, August 2002 and**

**d. Managing Compliance, prepared by Mark Harrison, September 2003**

These two reports examined a wide range of issues and practices in Jordan to see how much progress had been made following the introduction of the Customs Law in 2000, and identified areas requiring improvement.

***Binding Rulings***

The report proposed that Customs should establish a system of binding rulings through which to provide advice on the law. Penalties should apply when advices are ignored or disregarded and there is subsequent non-compliance.

The group considered this recommendation in light of Standard 9.9 of the Kyoto Convention, and with the benefit of draft regulations prepared by AMIR Program Customs Specialist Jamal Olaimat some time ago. There was some concern that this would put Customs in the position of a court, in that it was making a legal interpretation of the Customs Law. However, it was also recognized that Customs officers interpret the law every day when making decisions on classification and valuation. The binding ruling merely made this decision in advance of the goods being entered.

The conclusion reached was that there would need to be a head of power in the act saying that Customs could make determinations in advance of the entry of goods which would then be binding both on Customs and the importer who had made the request. This basic rule would need to be supplemented by regulations along the lines of those of Mr. Olaimat to spell out the conditions under which binding rulings could be issued. The draft article is included in the matrix, together with the proposed regulations.

### ***Penalties***

The Harrison report (and the earlier one from Mr. Cunningham) recommended that Customs should review the quantum of penalties in Title 13, add penalties relating to risk-managed compliance, and cross-reference penalties in the law to the offences to which they relate.

The changes proposed in the Customs draft (see above) will make a substantial improvement in the level of penalty and the circumstances in which penalties can be imposed. These are welcome improvements.

There are not many areas left to be improved. One area that does cause some concern is in relation to the retention and production of documents for post transaction audit purposes. Article 199 (R) provides a penalty of between 50 and 500 JDs for “failure to keep registers and documents and similar items during the period prescribed in Article 183 of this Law or failure to present these registers and documents”. The problem in the near future will relate not so much to documents or records, as to computer systems, and computerized data (as opposed to hard copy information). Unless effective penalties are in place, traders may be able to abuse the self-assessment process by deliberately destroying records to conceal major fraud, and pay only a nominal penalty for having failed to retain and produce documents. This can be avoided if there are sufficient investigation skills to be able to identify and prosecute fraud without a documentary record, but clearly the documentary record is important. It is essentially a matter of policy, but it would be desirable if Customs were to seek a higher penalty in relation to the deliberate destruction of documents, and the deliberate withholding of documents from Customs. In addition to higher penalties, the failure to produce the records on demand by Customs in other countries results in the issuance upon application to a court of law of an order preventing the importer from further engage in import transactions. In effect, the importer is out of business until he produces the records.

### ***Post-Transaction Compliance***

The report recommends that Customs develop legislation to establish in greater detail the rights and duties of citizens dealing with Customs in a risk-managed environment. The issues here relate to matters such as document retention and production, access to premises for audit purposes, the availability of computer systems for examination, and other matters necessary to carry out audits in the traders’ premises.

These matters are covered in some degree by Article 183, but these provisions are lacking in several respects:

- They do not cover a computerized environment
- They do not contain provisions relating to the rights of Customs to question people, inspect and seize equipment, or take other necessary measures (although there is an express power to seize documents and goods can be inspected within 3 months of clearance under Article 84A)



- They do not contain provisions relating to the rights of the owner of premises to refuse admission to customs officers in certain circumstances, or to be compensated for damage resulting from customs post transaction audit.

However, there is in the draft legislation now a serious commitment by Customs to introduce post-transaction audit through Article 84. Many of these provisions could be included in regulations to be issued under that Article. This is discussed further in the section below dealing with the report on due diligence.

Following the working group's discussion on this issue, I am satisfied that the concerns raised in my report can be dealt with as proposed in the due diligence report. I would therefore endorse the recommendations arising from that report as providing the legislative coverage that I consider desirable.

### ***Brokers***

The Harrison report recommends that the provisions of the Customs Law relating to brokers should be reviewed against the relevant provisions of the Kyoto Convention and strengthened where necessary to ensure that brokers recognize the need to aspire to a higher level of professionalism. These issues have been dealt with in the discussion of the Customs report above.

### ***IT***

The Harrison report recommended that Customs develop appropriate legislation to support the introduction of information technology. This recommendation has largely been superseded by the adoption of the Electronic Transactions Law that covers the issues that are necessary for an electronic transaction to have the legal validity required. The Electronic Transactions Law appears to be modeled on similar Australian legislation, and provides a thorough basis for electronic transactions. The working group also noted that there is continuing discussion of these issues in the Parliament and that it was necessary to await the outcome of these deliberations before contemplating any change to the Customs Law.

I am satisfied therefore that there is a sufficient legislative basis for Customs to proceed to develop a more sophisticated IT approach to customs processing than it currently has, and that any procedural matters relating to electronic transactions can be dealt with through subordinate legislation as and when required.

### ***Investigation and Intelligence***

In my earlier report I was concerned that the Law appeared to give Customs limited powers in relation to anti-smuggling. I recommended that new provisions to give effect to revised procedures in relation to investigation and intelligence should be drafted to ensure an appropriate legal basis for their implementation.

The major issues here relate to the power of customs to pursue smuggling effectively. These issues have been dealt with to some extent by the re-definition of penalties in Article 203 and by the ability of Customs to impose a form of provisional seizure of property of suspected smugglers. The changes proposed in the customs report meet these concerns.

In relation to intelligence exchange, it would be desirable for Jordan to become a party to the Johannesburg Convention on Mutual Administrative Assistance to supplement regional and bilateral agreements in relation to the exchange of intelligence. However, there would appear at this stage to be no need for legislative change as Jordan is not yet a party to the Agreement and, more significantly, appears not to need any further legislative change to enable it to comply with existing intelligence exchange obligations.

### ***WTO Obligations***

The Harrison report recommended that Customs, in consultation with the Ministry of Trade and Industry, review the operation of the Customs Law in giving effect to obligations under WTO Agreements. This appears to have been done, at least in relation to the General Agreement on Tariffs and Trade (GATT) requirement that invoices not be certified by the Jordanian Consulate in the country of origin.

Broader issues have not yet been tackled. The ability of Customs to collect anti-dumping or countervailing duties, for example, is not specifically provided for in the Customs Law. However, I understand that the principal work on anti-dumping issues is not Customs responsibility, and it is not essential that the Customs Law be changed to allow for anti-dumping measures to be applied – that can be done through other legislation.

At this stage, therefore, I do not see any need for the Customs Law to be further amended for WTO/GATT compliance purposes.

### ***Kyoto Compliance***

The Harrison report drew attention to the need for the Customs Law to reflect potential commitments under the Revised Kyoto Convention. This recommendation was subsequently developed in detail in the report prepared by AMIR Program consultants Mark Harrison and John Howard in February 2004. The issues from that report are discussed below.

### **e. Due Diligence Report (Golden List Program)**

This report looks at the introduction of the Golden List of importers and at the legislative changes that would assist to develop a particular regime of facilitation for Golden List companies. Many of these recommendations would also provide, in the longer term, a general level of facilitation to importers and exporters that is more in line with Kyoto

Convention standards than currently exists. However, at this stage, I have regarded these provisions as applying to a select group of declarants only.

The Articles of the Customs Law reviewed in this paper are:

A 31 (C), 31 (D) 31(G), 39 (C), 61 (1) (2), 66(2), 69, 80, 83, 84, 88, 133, 148, 167 B), 170, 183, 198, 199, 200

The report contains many important recommendations, which are discussed below in light of the conclusions of the working group.

*Reasonable care (due diligence):* The report recommends that existing Article 61 be replaced with a new article to introduce into Jordan Law the concept of due diligence or reasonable care. This article would effectively provide for a self-assessment process that would enable Golden List companies to take full responsibility for their declarations, and in return for exercising a high level of compliance, benefit from less Customs intervention at the time that goods are being imported.

The view of the working group was that Article 61 needs to be retained to cover the situation where the declaration is being lodged under existing conditions, whereas the proposal is for circumstances where the gold list is being used, i.e. it applies to highly compliant traders only, not to all. Therefore, the concept should be added to the law as a new article. The group argued that the logical place to introduce this was as a further amendment to Article 148, which is concerned with simplified measures to assist traders.

It was felt that the amendments could best be done by creating a head of power in the Law and then allowing Customs to issue detailed regulations or instructions under this head of power. This would make the change easier to deal with and more flexible. The working group suggested the following text go into Article 148 as Paragraph C:

The Department may grant and allow for certain importers of record or their agent to lodge declarations under such terms and conditions as may be decided by the Director and contained in instructions issued by the Department. Such terms and conditions shall relate to the identification of those importers who may use this facility, the timing of lodgement of the declaration, the information to be included in the declaration, the requirement (if any) for supporting documents, the means of lodgement (including electronic means) and requirements for signature of the declaration and any other measures designed to simplify the lodging of declarations.

This should be supplemented by regulations along the lines proposed by the due diligence report (subject to change of detail as Customs determine.) The terms of these suggested regulations are also set out in Part C (the matrix).

*Prior disclosure* The report recommends that the law be amended to include a provision after Article 200 to introduce the concept of prior disclosure. This issue was discussed by

the group in the context of voluntary disclosure (see above). The resulting amendments reflect that discussion.

*Post-transaction audit:* The report recommends that Article 84 be replaced with a new article on regulatory audit, which would provide for audits that can occur other than when a smuggling offence is suspected. (This also reflects the concerns of the Harrison reports as discussed above.)

The group considered this draft and noted that the Customs report also contained a re-draft of Article 84 which they felt achieved the result necessary. They did accept, however, that the greater detail of the Tarawneh draft provided the basis for regulations to support the re-drafted Article 84, particularly part 2 which relates to the conduct of audits.

It is my view that the more extensive provisions drafted by Dr. Tarawneh provide a more effective basis for the conduct by Customs of regulatory audits. I do not believe that the customs amendments achieve sufficient clarity as to the powers that Customs can exercise against importers and brokers. These are intrusive powers, and it is desirable therefore that there be a clear statement of these powers in the law.

The matrix therefore contains both the Customs draft and the Tarawneh draft. The Tarawneh draft is presented as regulations rather than as an amendment to the Customs Law, but whether it goes into the law itself or becomes subordinate legislation, it will be necessary for Customs to have more detailed powers than currently exist.

*Record keeping:* The report also proposed a new article to be inserted after Article 68 to enhance record keeping requirements. If adopted, minor changes would also be needed to article 170, 183 and 199.

The group felt that the amendments proposed to Article 84 would achieve the same result, provided that Article 199 was amended to increase the penalty that applies to failure to meet documentation requirements. It will be important for the regulations under Article 84 to provide for the retention of documents by gold list companies, but if this is done, then the new article would not be needed.

#### **f. The Benefits and Use of Customs Bonds in Jordan, prepared by Dr, Mohammed Tarawneh, June 2004**

This report examines the benefits that would arise both for Customs and the national economy if the current system of securities were augmented by the inclusion of the concept of “customs bonds”. The report concludes that at present, the law does not provide for such bonds.

It recommends that they could be introduced as follows:

- amending Articles 88, 90, 94, 97, 98, 102, 108, 117, 132, 133, 139, 143, 147, 31-D, 41, 80-F, 83, 167-B, 193, 139, 47, 75 82-C to use wording which allows for

either “bond” or “security” rather than guarantee. The word “security” is preferable to the word “bond” as it could potentially refer to any financial security.

- Under Title One on definitions in the current Customs Law, the word “security” should be defined as: “any form of financial security to protect all customs-related transactions and according to directive(s) issued by the Customs Department.”
- A new article should be added to the current law authorising the director of the Customs Department to issue the necessary directive(s) detailing the acceptable forms of “security”.
- The director of the Customs Department should issue directives(s) detailing all forms of financial securities acceptable to the Customs Department; among which potentially surety bonds and bank guarantees. Directive 66 of the year 2000 (Titled “Guarantees”) issued by the Customs Department is a good example to follow for other forms of security, including surety bonds.

The workshop had the benefit of a presentation by AMIR Program consultant, Mr. Robert Kielbas, on customs bonds. He explained the benefits to be gained from freeing up importers’ capital, and from the rapid movement of goods through the Jordanian economy, and how customs bonds could speed up this process. There is now the opportunity to have customs bonds in Jordan that will:

- Attract more foreign investment
- Make customs more efficient
- Develop additional trade.

These actions in turn will lead to long-term economic development through the opening of local markets and trade liberalization. Without these economic gains there is a good possibility that the benefits will not be realized. The responsibility for making this happen falls on both public and private sectors. The bond replaces the guarantee that is posted with Customs. It guarantees that the importer will pay the duty and meet all other obligations such as re-export, proper documentation etc. Bonds can also be written for a one year term, not for each transaction. The costs are less to the importer and free up his capital. The bonds are issued by an insurance company, but they are not an insurance product per se. The costs are very small – similar to a premium – and are likely to be similar to the fees currently charged by the banks.

The workshop then considered the recommendations in the Tarawneh report. They accepted the general principle and the thrust of the recommendations proposed by Dr Tarawneh. They also noted the need for a definition of “customs bond” for inclusion in Article 2. This will need to be coordinated with any definition that appears in other legislation, such as the Insurance Act. The provisions relating to customs bonds have therefore been included in the matrix in the form proposed by Dr Tarawneh.

**g. Kyoto Compliance, prepared by John Howard and Mark Harrison, February 2004**

AMIR Program consultants John Howard and Mark Harrison conducted a review of Jordan's level of compliance with the Kyoto Convention and concluded that there were two changes required for Jordan to be compliant with the General Annex to the Kyoto Convention. There were also several aspects of the Specific Annexes that would require legislation.

*General Annex*

The two areas identified as requiring change in relation to the General Annex were:

- Legislation to enable regulatory (post-transaction ) audits to occur
- Legislation in relation to binding rulings (note that these are also areas identified in Mark Harrison's legislation report).

*Specific Annexes:*

- Annex A – provisions on temporary storage
- Annex B – chapter 2
- Annex F – detailed legislation required but not yet
- Annex G – legislation on temporary admission.

The work on Specific Annexes has been further developed by the Kyoto Project Management Team which was established in 2004 and which met in a workshop and then as working groups after the workshop.

The amendments proposed in the Customs draft will make Jordan compliant with Kyoto in relation both to regulatory audits and to binding rulings. There will then be no real impediment to Jordan acceding to the Convention, which is likely to come into force very soon as only three further ratifications are required.

The changes to give effect to the Specific Annexes need to continue to be developed by the Kyoto Project Management Team, but there is no need for those changes to be presented in this legislation. To do so would greatly complicate the process and potentially delay the passage of these important measures and there is ample time for Jordan Customs to determine which of the specific annexes it wishes to accede to and those which it does not (none of the Specific Annexes is mandatory). Recommendations for further legislative change to give effect to Kyoto can therefore wait until the KPMT has finished its work and the need for legislative change (if any) has been identified).

## **Summary and Recommendations**

Customs has made real progress towards identifying and drafting the changes necessary to give effect to AMIR Program recommendations. However, there are some additional changes to be made as well.

In short, it is recommended as follows:

- That Article 31 be amended to allow for declarations to be actioned without invoices being presented in certain circumstances
- That Article 84 be amended to enable Customs to apply post transaction audit to “Golden List” companies
- That Article 84 also be amended to provide for voluntary disclosure
- That a new article be added to the Law to allow for binding rulings
- That Article 148 be amended to allow for pre-clearance and for reduced documentary requirements for “Golden List” companies
- That amendments be made as required to provide for customs bonds as an alternative to cash securities or bank guarantees
- That Article 166, 168 and 169 be amended to impose stricter requirements on clearance agents (brokers)
- That “reserved seizure” be introduced as proposed by Customs to assist with anti-smuggling
- That the penalties provisions be strengthened as proposed by Customs
- That the other changes proposed by Customs be endorsed by the AMIR Program as contributing to an improved Customs Law.

## Annex A: Matrix of Proposed Legislative changes

### DEFINITIONS

Article	Original article text	Proposed text	Reasons	Comments by author
Article 2	<p>Wherever stated in this Law, the following words and expressions shall have the meanings designated hereunder unless otherwise indicated by context:</p> <p><b>The Declaration; The Customs Declaration:</b> The statement submitted to the Department specifying the characteristics of the declared goods and including a detailed quantity listing prepared according to the provisions of this Law. The required documents enclosed therein are considered an integral part of the declaration.</p> <p>Definition of “security” not available.</p>	<p>Article 2 : The same</p> <p><b>The Declaration; The Customs Declaration</b></p> <p>The statement submitted to the Department specifying the characteristics of the declared goods and including a detailed quantity listing prepared according to the provisions of this Law.</p> <p><b>Security:</b> “any form of financial security to protect all customs-related transactions and according to directives issued by the Director of the Customs Department”.</p>	<p>Because this is now under the provisions of article 200 and no need to consider other documents as part of the declaration since inconsistency with declaration considered as negligence error.</p> <p>This will enable the introduction of Customs bonds by providing a broad definition of security.</p>	<p>This is a logical change to the law, which follows from the change to Article 200. The implications of the change for other provisions relating to the declaration need to be considered, but it is a step towards removing the need for the supporting documents to be lodged with the declaration at any time.</p> <p>This meets the recommendation of the report on customs bonds.</p>



### CUSTOMS TARIFF COUNCIL

Article 13	<p>A- A Higher Customs Committee of experts and specialists shall be formed by the Cabinet and chaired by the Minister, and shall give consultations regarding all matters that would help realize the objectives of this Law.</p> <p>B- A Council which shall be known as the (Customs Tariff Council) shall be formed, chaired by Minister of Finance and with the Minister of Industry and Trade, the Minister of Supply and the Director as members.</p>	<p>A- No change.</p> <p>B- A Council which shall be known as the (Customs Tariff Council) shall be formed, chaired by Minister of Finance and with the Minister of Industry and Trade and the Director as members</p>	Minister of Supply was deleted because this ministry was cancelled.	Housekeeping provision. Tidies up an existing historic anomaly.
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### VALUATION AND INVOICES

Article 31	<p>A - If the customs value is not determinable according to the provisions of Articles (28, 29, and 30) of this Law, it shall be determined according to the data available in the Kingdom, by using reasonable methods consistent with the provisions of the above-mentioned Articles. The customs value shall not be determined on bases of the following:</p> <ol style="list-style-type: none"> <li>1. The selling price in the Kingdom for locally produced goods;</li> <li>2. the higher value among several values;</li> <li>3. The price of the goods on the domestic market of the country of exportation;</li> <li>4. The cost of production, other than the computed sum determined for identical or similar goods in accordance with the</li> </ol>	Article 31/ A- No change.	Paragraphs C, D and E of this article were changed due to Jordan's commitments of WTO provisions regarding the cancellation of the certifying of invoices by chambers of commerce or Jordanian Consulate Mission.	<p>The changes proposed to this article are worthwhile, in that they make it easier to provide the invoice and therefore are consistent both with WTO requirements and with Kyoto.</p> <p>More importantly, the provisions provide a basis on which Customs can move to reduce the requirement to produce an invoice with every transaction by using the head of power in Paragraph E to remove the requirement that it be lodged with electronic transactions, or other classes</p>
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	<p>provisions of Paragraph (D) of Article (30) of this Law;</p> <p>5. The price of goods sold for exportation to a third country other than Jordan;</p> <p>6. Arbitrary or fictitious values;</p> <p>7. The minimum customs value.</p> <p>B- Upon request thereof, the importer shall be advised in writing about the methods used in customs valuations pursuant to the provisions of Paragraph (A) of this Article.</p> <p>C- Every declaration shall have enclosed therein an original itemized invoice certified by the chamber of commerce of the city of export or any entity recognized by the Department and attesting to the authenticity of the prices and the origin. The documents must also be certified by the Jordanian Consulate Mission where available.</p> <p>D-Upon the Director's approval, customs clearance formalities may be completed without submission of the certified invoices and required documents, against a cash deposit or a bank guarantee which may not exceed respectively 2% and 4% of the value of the goods, in lieu of each document. The payer shall be refunded if the certified invoices and required documents are submitted within (60) days of payment.</p> <p>E- The certified invoice requirement and the provisions applicable thereto may be waived partly or entirely on the basis of</p>	<p>B- No change.</p> <p>C- Every declaration shall have enclosed therein an original itemized invoice, in accordance with instructions issued by the Minister. (Reconsider following any changes re electronic lodgement.)</p> <p>D-Upon the Director's approval, customs clearance formalities may be completed without submission of the invoices and required documents, against a cash deposit or a bank guarantee which may not exceed 2% of the value of the goods, in lieu of each document. The payer shall be refunded if the certified invoices and required documents are submitted within (60) days of payment.</p> <p>E- The original invoice requirement and the provisions applicable thereto may be waived partly or entirely on the basis of</p>		<p>of transactions (e.g. declarations lodged by companies on the "Golden List").</p> <p>This article therefore provides a basis for a step-by step move to reduce the requirements for documents to be lodged when goods are entered. The provision only relates to invoices, however, and other changes are needed to reduce the requirements for other documents.</p>
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	instructions issued by the Minister upon the Director's recommendation for this purpose, which instructions shall specify the waiver conditions. The instructions shall be published in the Official Gazette.  F- J: No change	instructions issued by the Director for this purpose, which instructions shall specify the waiver conditions.		
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### **LABELLING**

Article 40	Foreign goods that carry a mark name or sign on the goods, the packages, or the wrappings that falsely suggest that the goods are of local origin shall be considered prohibited. This shall also apply to goods subject to suspended duties.	Foreign goods that have a fixed mark or sign on the goods that indicate that the goods are of local origin shall be considered prohibited. This shall also apply to goods subject to suspended duties, excluding goods imported unassembled by Jordanian manufacturers with an added value not less than 40%.	More clear text and to avoid falsely suggest meanings. Add new text.	This provision essentially clarifies the definition of those goods that are prohibited imports because they have been incorrectly labelled as being of Jordanian origin. This is essentially a labelling issue, rather than an intellectual property right (IPR) or prohibited goods issue. As such, not a significant amendment but worth doing.
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### **POST TRANSACTION AUDIT**

Article 84	A- The customs authorities, by the Director's permission, may review the declaration and the commercial documents pertaining to the exportation and importation of goods which are already released. Goods in the premises of the person concerned or any other person directly or indirectly involved in the business transaction may be inspected and tested within a period not exceeding three	A- No change.		<u>Article 84</u> has been amended by the inclusion of a new paragraph B. This is a particularly important amendment as it is designed to create the basis for due diligence, or a "Golden List" of companies that have been credited with a high level of compliance and therefore are
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	<p>months from the date of release of the goods.</p> <p>B- If it is established through post - clearance inspection and examination that the customs procedures provided for in this Law have been applied incorrectly or on the basis of false or incomplete information, the customs authorities may take the measures necessary to rectify the mistake in the light of available information and in accordance with the procedures stipulated in this Law.</p>	<p>B- Pre-coordination with companies, persons and parties included in post auditing, is possible. As a result of this auditing, Customs procedures, facilitations and arrangements may be granted to those entitled against their compliance with the valid legislations. Otherwise, legal actions will be taken vis a vis the non-compliant ones. The provisions, principles and conditions necessary for implementing the provisions of this paragraph will be decided based on instructions issued by the Director.</p> <p>C- If it is established through post - clearance inspection and examination that the customs procedures provided for in this Law have been applied incorrectly or on the basis of false or incomplete information, the customs authorities may take the measures necessary to rectify the mistake in the light of available information and in accordance with the procedures stipulated in this Law.</p>	<p>Add new paragraph B, in order to allow for post-auditing and compliance, more transparency, and Kyoto conformity.</p>	<p>seen to qualify for post-transaction audit. Under this provision, a head of power is created that enables the Director to issue instructions on the basis under which this facility will be given, and also provides for penalties to apply if there is a breach of the conditions by the company concerned. These companies will be subject to post transaction audit under Article 184 of the Customs Law (in other words, they will not be subject to inspection of goods and documents at the time of importation). This is an important step towards a wider program of facilitation based on post-transaction audit. At this stage, it is capable of providing that level of service to specified companies, but in the long run there is no reason why the Director's instructions could not extend that level of facilitation to more and more companies.</p>
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**Alternative proposed text for Article 84 C, as drafted by Dr. Tarawneh**

**(a) Examination of Books and Witnesses:**

In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees and taxes due or duties, fees and taxes which may be due the Kingdom of Jordan, for determining liability for fines and penalties, or for insuring compliance with the laws of the Kingdom of Jordan administered by the Customs Department, the Director, or an authorized customs officer appointed by the Director, may

(1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this article, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that -

(A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Department required its presentation at the time of entry) it shall be provided to the Customs Department within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and

(B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under article 199 of this law;

(2) summon, upon reasonable notice -

(A) the person who: (i) imported, or knowingly caused to be imported, merchandise into the customs territory of the Kingdom of Jordan, (ii) exported merchandise, or knowingly caused merchandise to be exported, (iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or (iv) filed a declaration, entry, or drawback claim with the Customs Department;

(B) any officer, employee, or agent of any person described in subparagraph (A);

(C) any person having possession, custody or care of records relating to the importation or other activity described in subparagraph (A); or

(D) any other person he may deem proper;

to appear before the appropriate customs officer at the time and place within the customs territory of the Kingdom of Jordan specified in the summons, to produce records and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

(3) take, or cause to be taken, such testimony of the person concerned, under oath, as may be relevant to such investigation or inquiry.

**(b) Regulatory Audit Procedures:**

(1) In conducting a regulatory audit under this article, the Customs Department auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Department auditor shall immediately provide a further estimate of such additional time.

(2) Before commencing an audit, the Customs Department auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Department auditor shall schedule a closing conference to explain the preliminary results of the audit.

(3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Department auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the officer designated, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.

(4) Except as provided in paragraph (5), the Customs Department auditor shall complete the formal written audit report within 90 days following the closing conference unless the officer designated pursuant to regulations provides written notice to the person being audited of the reason for any delay and the anticipated completion date. A copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.

(5) Paragraphs (3) and (4) shall not apply after the Customs Department commences a formal investigation with respect to the issue involved.

(6) If during the course of any audit concluded under this article, the Customs Department identifies overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit that the Customs Department has defined, then in calculating the loss of revenue or monetary penalties, the Customs Department shall treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or under-declarations also identified on finally liquidated entries, if such overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law.

#### **VOLUNTARY DISCLOSURE**

<b>Article 84 (d)</b>	No paragraph (D) at present	Add a new paragraph D to Article 84 providing that the declarant may, on a voluntary basis, declare to Customs changes in the customs declaration after it is processed provided that the Customs Department has not taken any procedures towards audit or investigation or announced its intention to do so. Under D, disclosure should be submitted under this paragraph in writing, with relevant documents and details regarding the violation attached. Customs and other taxes will be collected upon disclosure, without penalty, which will not prevent Customs from conducting post-auditing of the person making the disclosure.	This amendment will enable voluntary disclosure of errors to be made under the Customs Law.	This change will assist the development of trust between declarant and Customs, enhance partnership with the private sector and save customs staff effort. This in turn will enable Customs to focus on non-compliant traders and guarantee government revenues with less costs and effort.
<b>Article 212</b>		Article 212 needs to be amended to ensure that no penalty applies in the case of voluntary disclosure.		It is important that traders realise that they will not incur a penalty for their error if they voluntarily disclose it.

## CUSTOMS BONDS

<b>New Article</b>  <b>Articles 88, 90, 94, 97, 98, 102, 108, 117, 132, 133, 139, 143, 147, 31-D, 41, 80-F, 83, 167-B, 193, 139, 47, 75 82-C</b>	All articles use differing terminology to refer to different types of security.	Amend Articles 88, 90, 94, 97, 98, 102, 108, 117, 132, 133, 139, 143, 147, 31-D, 41, 80-F, 83, 167-B, 193, 139, 47, 75 82-C to use wording which allows for either “bond” or “security” rather than guarantee.	The word “security” is preferable to the word “bond” as it could potentially refer to any financial security.	A broader definition of the word “security” and amendment of the articles identified would give Customs the opportunity to introduce customs bonds in those areas where it sees advantage in doing so.
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The Director of Customs may issues directives setting out what will constitute acceptable forms of security for the purposes of this law. Directive 66 of the year 2000 (Titled “Guarantees”) issued by the Customs Department is a good example to follow for other forms of security, including surety bonds.

## WAREHOUSING

<b>Article 105</b>	Each access point to a public warehouse site shall be secured by two different padlocks, with one of the padlock keys kept with the customs Department and the other with the party concerned.	Each access point to a public warehouse site shall be secured on the liability of the investing entity according to instructions issued for this purpose.	This amendment due to the new concept regarding opened warehouses, customs started to consider.	Housekeeping provision.
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## PRE-CLEARANCE AND SIMPLIFIED DECLARATIONS

<p><b>Article 148</b></p> <p>Notwithstanding the provisions of Article (69) of this Law, and for the purpose of simplifying customs formalities, the Minister may waive the inspection requirement and allow clearance of goods <i>ex facie</i>, according to the provisions and terms specified in the Minister's instructions issued in the Official Gazette.</p>	<p>A- Notwithstanding the provisions of Article (69) of this Law, and for the purpose of simplifying customs formalities, the Minister may waive the inspection requirement and allow clearance of goods <i>ex facie</i>, according to the provisions and terms specified in the Minister's instructions issued in the Official Gazette.</p>	<p>It is now paragraph (a).</p>	<p><u>Article 148</u> allows the Minister to make instructions excluding the requirement that goods be examined on clearance. This is an important provision in providing a power to assist facilitation. The amendment proposed to Article 148, through the inclusion of a new paragraph B, is very significant, as it will establish the basis for the pre-clearance of goods. The Article effectively provides for the lodgement of declarations, the collection of duties and the clearance of goods before their arrival in the Kingdom. It also provides a general head of power for the issuing of instructions to give effect to pre-clearance procedures (and to detail procedures in the event that pre-cleared goods do not arrive in the Kingdom).</p>
<p>B- Not available.</p>	<p>B- 1- Without prejudice to the provisions of article (78) of this law, it is allowed to fill Customs Declarations, process customs procedures and receipt of duties on goods prior to the entry into the Kingdom.</p> <p>2- Notwithstanding the provisions of Article (66) of this Law, it is permitted to return back received duties and fees in accordance with the provisions of this paragraph, and cancel the declaration in the event that goods have never been received.</p> <p>3- All articles, conditions and procedures needed to implement this paragraph including types of goods that benefit of such procedure will be identified through instructions to be issued by the Director General for this purpose.</p>	<p>This paragraph is drafted to have an article on pre-clearing of goods, prior to actual arrival in the Kingdom, for procedures' simplification, time saving, trade facilitation, and in coherence with International trade agreements; especially Kyoto Convention for Customs Procedures Simplification &amp; Harmonization.</p>	
<p>C. Not available</p>	<p>C. The Department may grant and allow for certain importers of record or their agent to lodge declarations under such terms and conditions as may be decided by the Director</p>	<p>This amendment is to allow for the exercise of reasonable care/ due diligence.</p>	<p>The econd major amendment to the article is the addition of a new paragraph C that would allow for the lodgement of</p>



		and contained in instructions issued by the Department. Such terms and conditions shall relate to the identification of those importers who may use this facility, the timing of lodgement of the declaration, the information to be included in the declaration, the requirement (if any) for supporting documents, the means of lodgement (including electronic means) and requirements for signature of the declaration and any other measures designed to simplify the lodging of declarations.		declarations by those importers who are recognised as operating under a system of due diligence or reasonable care (i.e. highly compliant traders). The article is amended by the inclusion of a head of power, which would then enable detailed instructions and procedures to be issued by regulation.
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**Proposed Text of Regulations to be issued under A148 to introduce the concept of due diligence into the Customs Law (as drafted by Dr. Tarawneh)**

(a) Requirement and time

- (1) One of the parties qualifying as "importer of record" under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care:
  - (A) make entry therefore by filing with the Customs Department such documentation or, pursuant to an electronic data interchange system (if used), such information as is necessary to enable the Customs Department to determine whether the merchandise may be released from customs custody, and
  - (B) complete the entry by filing with the Customs Department the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system (if used), such other information as is necessary to enable the Customs Department to: (i) properly assess duties on the merchandise, (ii) collect accurate statistics with respect to the merchandise, and (iii) determine whether any other applicable requirement of the law is met.
- (2)
  - (A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Director shall by regulation prescribe.
  - (B) When an entry of merchandise is made under this article, the required documentation or information shall be filed or electronically transmitted (if allowed) either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under article 166 of this law. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Department may, without liability, accept the declaration. For the purposes of this chapter, the importer of record must be one of the parties who is eligible to file the documentation or information required by this law.

- (C) The Director, in prescribing regulations to carry out this article, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. The Director shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the Kingdom of Jordan, and the equal treatment of all importers of record of imported merchandise.

(b) Signing and contents

- (1) Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system (if used). If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the Kingdom of Jordan for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Director may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents (if acceptable), as are required by regulation.
- (2) The Director, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of this law or any other applicable law, including a trademark appearing on the goods or packaging.

(c) Production of invoice

The Director may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof (if acceptable), in such manner and form, and under such terms and conditions, as the Director considers necessary.

(d) Statistical enumeration

The Director in cooperation with all relevant government branches shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the Kingdom of Jordan and exported from the Kingdom of Jordan, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(e) Statement of cost of production

Under such regulations as the Director may prescribe, the Customs Department may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Department considers such verification necessary for the appraisement of such merchandise.

(f) Admissibility of data electronically transmitted

Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

(g) Declaration

Every importer of record making an entry under the provisions of this article shall make and file or transmit electronically (if allowed) therewith, in a form and manner to be prescribed by the Director, a declaration under oath, stating:

- (1) Whether the merchandise is imported in pursuance of a purchase or an agreement to purchase, or whether it is imported otherwise than in pursuance of a purchase or agreement to purchase;
- (2) That the prices set forth in the invoice are true, in the case of merchandise purchased or agreed to be purchased; or in the case of merchandise secured otherwise than by purchase or agreement to purchase, that the statements in such invoice as to value or price are true to the best of his knowledge and belief;
- (3) That all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and
- (4) That he will produce at once to the appropriate customs officer any invoice, paper, letter, document, or information received showing that any such prices or statements are not true or correct.

## BINDING RULINGS

Article 148 Bis	No current article	Where a declarant wishes to lodge a declaration in accordance with Article 148 (d), he may ask the Customs prior to lodging the declaration, for a ruling in relation to the tariff classification, value, origin or other matter in relation to the particular goods and transaction to which the declaration will refer. The Customs may provide a ruling in relation to that matter, which will be valid only for the circumstances described in the request for a ruling and which will be binding on Customs and on the declarant. The manner of requesting and providing the ruling shall be prescribed in instructions to be issued by the Director of Customs.	This provides a head of power for the issuing of binding rulings. It will need to be supplemented by instruction from Customs to cover the detail. Suggested instructions (drafted by Jamal Olaimat follow below).	Binding rulings are an important aspect of Chapter 9 of the General Annex of the Kyoto Convention. This provision will move Customs closer to Kyoto compliance, but will also provide an important facilitation tool for traders and clearance agents.
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## MODEL REGULATION – BINDING RULINGS

### Issuance of Preliminary Decisions:

1. The Customs shall, upon written application (including electronic) of an interested party, provide a preliminary decision providing interpretation of applicable customs laws or providing other appropriate information pertaining to a specifically described transaction. This decision will be binding on the Customs.

Preliminary decisions shall be issued for tariff classification of goods and the rates of duties and taxes applicable, valuation of merchandise, rules of origin, [exemption or relief from duties and taxes, eligibility for treatment under specific customs procedures such as processing, temporary admission, warehousing or drawback; repayment arrangements; procedural and administrative arrangements, such as hours of operation of customs points; security and acceptable methods for providing security for duty and taxes; and documentation requirements.]

2. A preliminary decision will be issued only for prospective transactions. These are transactions that are not already pending before the customs because merchandise has been imported, been declared to customs, or otherwise.

3. An application for a preliminary decision shall relate to only one type of good.
4. Applications shall be sent to [address]  
Applications shall include the following information:
  - a. the applicants name and address;
  - b. a detailed description of the goods permitting their identification and the determination of their classification in the customs nomenclature;
  - c. the composition of the goods and any methods of examination used to determine this, if necessary;
  - d. any samples, photographs, plans, catalogues or other documents available which may assist the customs authorities in determining the correct classification of the goods in the customs nomenclature;
  - e. the classification envisaged;
  - f. if requesting a country of origin decision- state the claimed country of origin and the basis of the claim according to the legal criteria of origin;
  - g. a statement concerning information submitted that should be treated as confidential;
  - h. indication by the applicant whether to his knowledge a binding preliminary decision has been issued for identical or similar goods has been applied for or issued.
5. Where the application does not contain all information necessary to issue a preliminary decision, the customs authorities shall ask the applicant to provide the missing information.  
  
Customs authorities shall process preliminary decisions in the order received unless an applicant can show a clear need for expedited treatment. The applicant must request expedited treatment in writing for consideration by the customs authorities.
6. Preliminary decisions shall be issued in the required format.  
  
Customs shall issue preliminary decisions to the applicant within 60 days of the receipt of the application for a decision. If the ruling has not been issued within 60 days of receipt of the application, the customs officials shall contact the applicant to explain the reason for the delay and state when it is expected that the ruling will be issued.
7. If the preliminary decision issued is adverse to the applicant then reasons for the decision must be provided. The applicant must also be informed of the right to appeal.
8. Any sample submitted shall become a part of the Customs file and will be retained until the preliminary decision is issued or otherwise disposed of. If the return of the sample is desired, this should be stated in the request for the preliminary decision and the desired method of return should be specified. All or part of any sample may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the issuance of the preliminary decision.

9. The recipient of a ruling, when fulfilling customs formalities, shall inform the customs authorities that he is in possession of a preliminary decision in respect of the goods being cleared through customs.
10. The binding ruling applies only to the particular goods and only where it is established to the satisfaction of the customs authorities that the goods in question conform to those described in the ruling.
11. A preliminary decision shall be valid for a period of ( ? ) years from the date of issue or until revoked, annulled or amended.
12. A preliminary decision may be annulled if it was based on incorrect or inadequate information provided by the applicant. The applicant who received the preliminary decision shall be notified in writing of the annulment. The annulment will be effective from the date of the decision to annul.
13. A preliminary decision may be revoked or amended when it becomes incompatible with new measures or judicial decisions. The applicant who received a preliminary decision shall be notified in writing of the revocation or amendment. The revocation or annulment shall take effect on the date of notification. However, in exceptional cases where the legitimate interests of the person to whom the decision is addressed, the customs authorities may delay the date when the revocation of amendment takes effect.
14. Any precedential preliminary decision will be published on the customs website or a customs publication within 90 days of issuance.

## EXEMPTIONS

<p>Article <b>149</b></p>	<p>The following shall be exempted from customs duties and other fees and taxes:</p> <p>A. Items admitted in the name of His Majesty the King.</p> <p>B. Gifts and donations to ministries, government departments, public institutions, state universities, municipalities, rural councils and joint services councils.</p> <p>C. Any items the Council of Ministers may decide to exempt upon recommendation of the Minister. The Minister shall determine the terms and procedures to be fulfilled in order to benefit from this exemption.</p> <p>D. Exempted imports which are used, or which are unfit for use may be sold by the Department, but subject to the Department's approval. The Department shall collect 75% of the sale proceed in lieu of customs duties and other fees and taxes.</p>	<p>The following shall be exempted from customs duties and other fees and taxes:</p> <p>A. Items admitted in the name of His Majesty the King.</p> <p>B. Gifts, donations, and any item the Council of Ministers may decide to exempt upon recommendations of the Minister, to ministries, government departments, public institutions, state universities, municipalities, rural councils, and joint services councils.</p> <p>C. Above exempted imports that are used, or which are unfit for use, may be sold by the Department, but subject to the Department's approval. The Department shall collect 75% of the sale proceed in lieu of customs duties and other fees and taxes.</p> <p>D. Any items the Council of Ministers may decide to exempt upon recommendation of the Minister. The Minister shall determine the terms and procedures to be fulfilled in order to benefit from this exemption. Exempted goods according to this paragraph will not be sold prior to obtaining the approval of the department. In case of goods clearance for consumption, duty fees and customs fees will be collected in accordance with articles of this law and valid laws.</p>	<p>The text is amended to allow exemption to government institutions that are mentioned in the law through a decision made by the Council of Ministers, consistent with amended paragraph C of the same article.</p> <p>It clarifies the subject of selling exempted goods, as well as collecting 75% of sale value only of exemptions of government institutions, state universities, and joint services councils. Such percentages will not be collected of exempted goods to private organizations such as companies and others.</p>	<p>Housekeeping provision.</p>
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## CUSTOMS BROKERS

<p>Article <b>166</b></p>	<p>A- Without prejudice to acquired rights, customs clearance may be practiced professionally only by persons licensed by the Minister upon the Director's recommendation.</p> <p>B- In the case of natural persons: 1- Agent must be a Jordanian citizen. 2- Agent must be at least twenty three years old. 3- Agent must have completed secondary school or worked as a customs official in the Customs Department for 15 years.</p> <p><b>4- 5</b> <b>C – I</b></p> <p>J- The customs clearance agent must operate through an office and must obtain the required municipal permit.</p> <p>K- 1- The Director may hold an annual competence exam for new customs clearance agents, and deny license if the exam is not passed. 2- The Director may issue the necessary instructions.</p>	<p>A. No change.</p> <p>B. In the case of natural persons: 1- Same. 2- Same. 3- Agent must have completed minimum general secondary certificate or equivalent, or worked as a customs official in the Customs Department for 15 years.</p> <p><b>4- 5</b> no change <b>C – I</b></p> <p>J- The customs clearance agent must own a main office and an office for each branch licensed to operate at customs centers provided he has obtained profession license in accordance with valid regulations.</p> <p>K- 1- The Director may hold an annual competence exam for new customs clearance agents, and deny license if the exam or any necessary training courses found needed for performing the job are not passed.</p>	<p>The article is amended to identify the general secondary certificate is the minimum qualification for performing the clearance work but not school certificate, so as to upgrade efficiency of workers of this profession.</p> <p>To maintain the reputation of the clearance profession. It should be practiced through offices but not through mobile persons.</p> <p>The text is amended to upgrade efficiency of workers through passing exams and training courses needed for their work.</p>	<p><u>Articles 166, 168 and 169</u> propose a number of changes in relation to clearance agents (customs brokers). This is an area that has been commented on in my reports and in the earlier report prepared by Bert Cunningham. We both have felt that there greater powers are needed in Customs to require a higher level of professionalism from brokers, if a true self-assessment environment is to be created. The amendment to Article 166 requires that brokers achieve the general secondary certificate, but I query whether this is really adequate when compared with the qualifications required in other countries (which are tertiary level certificates normally). Customs retains the right to deny a licence to a new broker if they do not meet requirements, but there is nothing that requires brokers to maintain their competence levels once licensed, or to pass competency tests once they have a licence. This is not going to raise the standards of brokers to a sufficient level.</p>
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		2- The Director may issue the necessary instructions for the implementation of this paragraph.		
Article 168	<p>A- The customs clearance agent may be subject to any of the following disciplinary penalties, commensurately with the offence and as determined by the Director:</p> <ol style="list-style-type: none"> <li>1- Written notice</li> <li>2- Written warning</li> <li>3- Suspension from work for a period not exceeding six months.</li> </ol> <p>B- The agent may be removed from the list of customs clearance agents and may be barred from practice permanently, by the Minister, and upon the Director's recommendation, in the following cases:</p> <ol style="list-style-type: none"> <li>1- If the clearance agent is penalized by a written notice and / or warning three times or more;</li> <li>2- If the clearance agent is suspended from work more than two times within four years;</li> <li>3- If the clearance agent is sentenced in a crime or misdemeanour against morals.</li> </ol>	<p>Article 168:</p> <ol style="list-style-type: none"> <li>a. No change.</li> </ol> <p>B- The clearance agent may be barred from practice if it is related to smuggling, forgery, or manipulation of the customs declaration, till a conclusive court decision is issued.</p> <p>C- The agent may be removed from the list of customs clearance agents and may be barred from practice permanently, by the Minister, and upon the Director's recommendation, in the following cases:</p> <ol style="list-style-type: none"> <li>1- If the clearance agent is penalized by</li> </ol>	<p>This paragraph is added that any clearance agent commits any offence of smuggling or customs declaration manipulation is suspended, due to the seriousness of actions committed especially by a clearance agent.</p> <p>The text is the same of paragraph (B) of the original text, but is renumbered to become (c) after the sub-article (4).</p>	<p>Article 168 has been amended to allow for the suspension of a broker pending a court decision in relation to charges of smuggling forgery or "manipulation" of a customs declaration and for having his licence revoked if convicted of such an offence.</p>

		<p>a written notice and / or warning three times or more;</p> <p>2-If the clearance agent is suspended from work more than two times within four years;</p> <p>3-If the clearance agent is sentenced in a crime or misdemeanour against morals.</p> <p>4- If he is found responsible of smuggling crime or equivalent or about to commit so whether through an absolute court verdict or by resettlement for committing forgery or manipulation of data of customs clearance and documents.</p>	<p>This sub-article is added due to the seriousness of actions committed especially by a clearance agent as his work is interconnected with the work of the Department.</p>	
Article 169	<p>By the Minister's approval, the Director may issue instructions specifying:</p> <p>A- The number of clearance agents allowed to practice at customs houses.</p> <p>B- The customs house or houses at which clearance agents may practice.</p> <p>C- Customs agents fees.</p> <p>D- Customs clearance companies may establish unions as dictated by public interest and subject to the Minister's approval.</p>	<p>A- No change.</p> <p>B- No change.</p> <p>C- No change.</p> <p>D- The Minister may establish clearance companies unions at customs centres as dictated by public interest through a decision issued for such purpose identifying necessary needed rules, conditions and procedures.</p>	<p>The text is amended to enable the Minister to establish customs clearance companies' unions to organize the profession of customs clearance and the work of clearance companies.</p>	<p>The amendments to Article 169 are not greatly significant, but are designed to ensure that there is Government control of brokers' associations.</p> <p>(See also Article 218 below.)</p>

## RESERVED SEIZURE OF GOODS

Article 191	Preparers of the verbal process may seize smuggled good or goods which are subject of an offence, and the means of concealment and of transport thereof, as well as any documents, for the purpose of proving offences and smuggling crimes and ensuring payment of fees, duties and fines.	Article 191: Paragraph (A) has the same text.  B- The Minister may issue a decision to impose reserved seizure on moveable and immovable properties of the violating person or who is responsible of smuggling till the case is resolved.	This sub-article is added to enable the Minister to impose reserved seizure on all properties of the violating person or who is responsible of smuggling to guarantee payment of penalties and fees.	<u>Article 191</u> provides an important addition to the powers of Customs in relation to criminal activity. It provides the Minister with the power to seize the property of a person suspected of engaging in smuggling pending the hearing of the case. This is important because it will enable Customs to prevent a person disposing of assets as a means of avoiding paying any penalty imposed by the court.
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## PENALTIES

Article 198	A- Except for cases amounting to smuggling and which are covered by Article (204) of this Law, a fine not exceeding half the amount of duties and taxes due shall be imposed on the following: 1- Unjustified shortages against what is listed in the maritime cargo manifest, or the equivalent document thereof. 2- A manifest in which the actual value does not exceed 10% of the declared value of the goods, or 10% of the weight, quantities, or size thereof, provided the goods are not prohibited goods.  B- Except for cases amounting to smuggling and which are covered by Article (204) of this Law, a fine not exceeding twice the amount of the duties or	Article 198: A- No change.  B- The original text of the paragraph is not changed, but a new sub-article (no. 6) is added.		<u>Articles 198, 199, 200, 203, 204, and 206</u> (which are all penalties provisions) have all been amended in ways designed to strengthen the penalties (a longstanding desire on the part of several consultants).  A new paragraph is added to Article 198, penalizing the unauthorised changing of the status of transit and export goods.
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<p>half the value of goods, whichever is less, shall be imposed upon the following offenses:</p> <p>1- A declaration intended to affect without a valid basis, eligibility for drawback, or a settlement of the accounts of goods admitted under a temporary admission status, or manufacturing and re-export status, if the value of the duty on such goods does not exceed 500JDs.</p> <p>2- Unjustified overages against what is listed in the cargo manifest or the document equivalent thereto. Parcels found in overage and which carry signs and numbers identical to those on other parcels shall be considered subject to higher fees or to prohibition.</p> <p>3- Unjustified shortages against what is listed in the land or air cargo manifest or the document equivalent thereto, whether the shortage is in the number of parcels, in the contents thereof, or in the quantities of knocked goods.</p> <p>4- The use of items subject to exemption or reduced tariff in or for other than the purpose of import, or the illegal exchange, sale or disposal of such items without the Department's approval and without submitting the documents.</p> <p>5- The sale of goods which are admitted under a suspended duty status, or their use outside permitted areas or for other than the</p>		<p>This sub-article is added as change or dispose of transit or re-exported goods or about to conduct such actions are considered violations due to the peculiarities of these actions and the need to have a text covering them.</p> <p>This paragraph is amended by addition of (or re-exported) to the original text, due to the great resemblance among the two customs situations.</p>	
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	<p>purpose of import or in other than their intended function, or the illegal exchange or disposal of such goods, before notifying the Department and submitting the required document.</p> <p>6- Not available.</p> <p>7. Obtaining drawbacks in a value exceeding JDs 500 without a valid basis.</p> <p>C- Without prejudice of paragraph (K) of this law's article, a penalty of not less than half of duties and fees and not to exceed double amount of transit goods declaration violations of value, type, quantity, measure or origin.</p>	<p>6- Change or dispose of transit or re-exported goods or about to conduct such actions.</p> <p>This sub-article is renumbered to carry no. 7.</p> <p>C- Without prejudice to paragraph (V) of this law's article, a penalty of not less than half amount of duties and fees and not to exceed double amount of transit or re-exported goods declaration violations of value, type, quantity, measure or origin.</p>		
Article 199	<p>Except for cases amounting to smuggling, and which are provided for in Article (204) of this Law, the following offenses shall be subject to a fine not less than JDs. 50 and not more than JDs. 500:-</p> <p>A- Submitting an export declaration which leads invalidly to evading export licensing or currency repatriation requirements.</p> <p>B- Submitting a declaration which is invalidly intended to affect eligibility for drawbacks, or a settlement of the accounts of goods admitted under a temporary admission status, or manufacturing and re-</p>	<p>Article 199:</p> <p>Except for cases amounting to smuggling, and which are provided for in Article (204) of this Law, the following offenses shall be subject to a fine not less than JDs. 50 and not more than JDs. 500:</p> <p>A- No change.</p> <p>B- No change.</p>		Article 199, paragraph W, is amended to include a failure to report export cargo accurately in an export declaration.

	<p>export status, if the value of the duty on such goods does not exceed 500JDs.</p> <p>C- Transporting passengers or goods within the Kingdom by means of vehicles admitted under a suspended duties status in violation of the provisions of Laws and regulations.</p> <p>D- Taking a route other than the designated transit route or re-exporting goods without the Department's approval.</p> <p>E- Removing the lead, buttons or the customs seals from goods consigned by transit or prepared for re-export.</p> <p>F- Submitting late after the expiry of the delay period, the documents required for the discharge and settlement of transit declarations or undertakings regarding temporary admission, or admission for internal manufacturing under a suspended duties status or re-export.</p> <p>G- Violating any of the terms and provisions of this Law and its pursuant regulations which are applicable to transit, internal manufacturing, temporary admission or re-export.</p> <p>H- Violating the provisions of private and public warehouses, in which case the due fine shall be fall upon the warehouse owners or investors.</p> <p>I- Possession by the person concerned of</p>	<p>C- No change.</p> <p>D- No change.</p> <p>E- No change.</p> <p>F- No change.</p> <p>G- No change.</p> <p>H- No change.</p> <p>I- No change.</p>		
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<p>more than one cargo manifest or the document equivalent thereto.</p> <p>J- Possession or transport of goods which are subject to the customs territory's judicial police, illegally or in a manner which is inconsistent with the contents of the transport permit.</p> <p>K- Ferrying by ships with loads of less than 200 freight tons, within the maritime customs territory, of restricted or prohibited goods, or goods subject to exorbitant duties, or ascertained prohibited goods, whether or not such goods are listed in the manifest, or a change of course by such ships in other than cases of maritime emergency or force majeure.</p> <p>L- Anchoring ships, or landing planes, or parking other means of transport in other than the designated sites authorized by the Department.</p> <p>M- The departure of ships, planes or other means of transport from the harbor or the customs premise without the Department's authorization.</p> <p>N- Anchoring ships of any load and landing planes at other than set harbors and airports, whether in ordinary or in emergency situations, without informing the nearest customs house about this.</p> <p>O –Transferring goods from one means of transport to another, or re-exporting goods</p>	<p>J- No change.</p> <p>K- No change.</p> <p>L- No change.</p> <p>M- No change.</p> <p>N- No change.</p> <p>O- No change</p>		
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	<p>without a declaration or due authorization.</p> <p>P- Loading and unloading ships, trucks, cars or other means of transport, or withdrawing goods without the Department's authorization, or in the absence of the Department officials, or in other than the specified hours, or in violation of the terms set by the Department and unloading goods at other than set places.</p> <p>Q- Obstructing the duties of Department officials and their right to search, verification and inspection, and failing to stop upon the Department's officials request. The fine in such a case shall be imposed on all accomplices in the offense.</p> <p>R- Failure to maintain records, official papers, and documents and like items for the period prescribed in Article (183) of this Law or failure to submit such records and documents.</p> <p>S- Non-compliance by customs clearance agents with customs regulations which specify their duties. Such an offense shall also be subject to the disciplinary penalties in accordance with the provisions of Article (168) of this Law.</p> <p>T- Confirmed shortages in goods placed in stores, if the goods are delivered in an apparently sound condition.</p> <p>U- Goods which escape seizure whose</p>	<p>P- No change</p> <p>Q- No change</p> <p>R- No change</p> <p>S- No change</p> <p>T- No change</p> <p>U- No change</p>	<p>This paragraph is amended by addition of (or re-exported) to the original text to resolve data violation on which</p>	
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	<p>value, quantity or class cannot be determined, without prejudice to prosecution on smuggling charges.</p> <p>V- Obtaining a drawback in an amount not exceeding 500 JDs without a valid basis legal basis.</p> <p>W- Transit customs declarations of different value, quantity, weight, measure or origin that are detected at the outgoing customs centre.</p>	<p>V- No change</p> <p>W- Transit or re-export customs declarations of different value, quantity, weight, measure or origin that are detected at the outgoing customs center.</p>	<p>smuggling crimes apply in spite of resemblance of transit situation.</p>	
Article 200	<p>Except for cases amounting to smuggling, the following offences shall be subject to a fine of between 25 - 100 JDs:-</p> <p>a- Declarations which are inconsistent with the documents enclosed therewith, in which case the fine shall be levied from the declarant.</p>	<p>No change</p> <p>a- Declarations which are inconsistent with the enclosed invoice and certificate of origin therewith, in which case the fine shall be levied from the declarant.</p>	<p>Paragraph (a) is amended to be in coherence with declaration identification amendment mentioned in article (2) of the Law, and to identify enclosed documents of the declaration for the purposes of asserting violations.</p>	<p>Paragraph (a) of Article 200 is amended to cover the situation where the declaration is inconsistent with the invoice or certificate or origin (see the amendment to Article 2 above). (Note that the penalty here still appears to be very minor, being pitched at between 25 and 100 JD.)</p>
Article 203	<p>Smuggling is the act of bringing goods into the Kingdom or taking them out there from illegally and without payment of all or part of the customs duties and other fees and taxes due, or in violation of the prohibition and restriction provisions of this Law or other laws and regulations. The provisions of this Article shall not apply to Article (197) of this Law.</p>	<p>Article 203: It is renumbered (a) of the same text.</p>		<p>Article 203 has been amended by the addition of a series of offences from Article 204, which has the effect, when combined with the amendments proposed to Article 206, of making them punishable by imprisonment and/or a fine. They are said to be “real” smuggling crimes rather than “judgmental” smuggling crimes, and a sentence of imprisonment cannot be</p>

	<p>Not available.</p>	<p>B- In addition to actions governed in paragraph (a) of this article, the following actions are considered actual smuggling crimes:</p> <ol style="list-style-type: none"> <li>1. Failure to enter nearest customs center.</li> <li>2. - Failure to use the routes designated for entry or exit of goods.</li> <li>3. - Loading and unloading goods to and from ships, inconsistently with regulations, on coasts with no customs houses, or within the maritime customs territory.</li> <li>4. Unloading or loading goods to and from the planes illegally, outside official airports, or jettisoning goods during flight, without prejudice to provisions of Article (53) of this Law.</li> <li>5. Loading and unloading goods to and from trains, inconsistently with regulations, in areas with no customs houses, or within the customs territory.</li> <li>6. Failure to declare at entry or exit incoming or outgoing goods which are not listed in the manifest, including passengers belongings,</li> </ol>	<p>This paragraph is added. Due to the seriousness of Items mentioned, they are separated from those mentioned in article (204) and added to article (203). They are considered real , not judgmental, smuggling crimes.</p>	<p>substituted by a lesser penalty. These provisions make offences which otherwise greatly weaken Customs control subject to much stronger sanctions, and will assist Customs to clamp down strongly on smugglers.</p>
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		<p>without prejudice to the provisions of Article (197) of this Law.</p> <p>7. - By-passing customs houses at entry or exit without declaring goods.</p> <p>8. The discovery of undeclared goods tucked with the intent of concealment in hideouts, holes, or places at the customs house which are not usually intended for such goods.</p> <p>9. Taking goods from free zones, storehouses or warehouses and into the customs territory without going through the customs formalities.</p>		
Article 204	<p>The following shall amount to smuggling:-</p> <p>A- Failure to present goods upon entry at the nearest customs house.</p> <p>B- Failure to use the routes designated for entry or exit of goods.</p>	<p>Article 204: The following shall amount to smuggling:</p> <p>A- Entry of foreign goods with label of Jordanian origin as stated in article (40) of this Law, even if it has been declared with its real brand on the manifest and enclosed documents, unless such label or brand are declared on the manifest.</p> <p>B- Disposition of released goods in return of necessary guarantees prior to the release of analysis or specifications results as stated in article (75/a) of this Law, even if goods are duty and fees paid.</p>	<p>Paragraphs A, B, C, D, E, F, G, H, I are transferred to article 203 and considered smuggling crimes:</p> <p>It is a new provision, the text states explicitly that entry of foreign goods with a brand and logo that will deceive others to think it is of Jordanian origin is considered smuggling unless stated openly so.</p> <p>It is a new provision. Disposition of released</p>	<p>In addition, three new offences have been added to Article 204, and to the definition of smuggling. They are subject to the penalty provisions in Paragraph B of the amended Article 206. These offences relate to mislabeling of goods as being of Jordanian origin, dealing with goods before analysis or specification results received, and wrongful claim for exemption from duty.</p>

	<p>C- Loading and unloading goods to and from ships, inconsistently with regulations, on coasts with no customs houses, or within the maritime customs territory</p> <p>D- Unloading or loading goods to and from the planes illegally, outside official airports, or jettisoning goods during flight, without prejudice to provisions of Article (53) of this Law.</p> <p>E- Failure to declare at entry or exit incoming or outgoing goods which are not listed in the manifest, including passengers belongings, without prejudice to the provisions of Article (197) of this Law.</p> <p>F- By-passing customs houses at entry or exit without declaring goods.</p>	<p>C-Declaring that leads to illegal use of duty fees exemption or obtain less fees and taxes according to tariff tables or agreements at which the Kingdom is one party through filling the declaration spaces, the clearance agent and the beneficiary of the declaration shall be held liable of any inconsistent information.</p> <p>D- Overages, shortages or replacements in the parcels or contents thereof if discovered after the goods have passed the entry point, and in the case of goods admitted under the suspended duties status provided for in title six of this Law. This provision shall apply also to goods which are smuggled into the Kingdom, or brought into the Kingdom without due customs formalities, and in which case the carrier shall be held liable.</p> <p>E- Failure to submit the evidence required by the Department for discharging declarations of goods which are admitted under the suspended duties status provided for in Title Six of this Law.</p> <p>F- - Submitting false documents with the intent of importing or exporting ascertained prohibited goods or prohibited goods or</p>	<p>goods prior to analysis results is of high risk and bypasses conditions of restriction.</p> <p>It is considered a smuggling act so as to resolve issues of filling declaration spaces with incorrect information, especially the ASECUDA system, for the purpose of getting exemption or less customs tariff.</p> <p>It is the same text of paragraph (H) of article 204 of the original law.</p> <p>The same text of paragraph (I) of article (204) of the original law.</p> <p>The text is similar to the text of paragraph (L) of article (204) of the original law, with the</p>	
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	<p>restricted goods or with the intent of distorting the value of imported goods so as to exceed the monetary quotas provided for by the laws in effect.</p>	<p>addition of the word (restricted) to the text as restricted goods were not mentioned in the original text.</p>	
<p>G-The discovery of undeclared goods tucked with the intent of concealment in hideouts, holes, or places at the customs house which are not usually intended for such goods.</p>	<p>G- Submitting false documents or placing false labels with the intent of non-payment of customs duties and fees totally or partially or with the intent to bypass provisions of prohibition or restriction without prejudice to article (198/A &amp; C) of this law.</p>	<p>The text is similar to the text of paragraph (K) of article (204) of the original law, with the addition of the word (restriction) to the text for the same previous reason.</p>	
<p>H- Overages, shortages or replacements in the parcels or contents thereof if discovered after the goods have passed the entry point, and in the case of goods admitted under the suspended duties status provided for in title six of this Law. This provision shall apply also to goods which are smuggled into the Kingdom, or brought into the Kingdom without due customs formalities, and in which case the carrier shall be held liable..</p>	<p>H- The transport or possession of ascertained prohibited goods, or prohibited goods, or restricted goods without presenting evidence that the goods are legally imported.</p>	<p>The text is similar to the text of paragraph (M) of article (204) of the original law, with the addition of the word (restricted) to the amended text as restricted goods were not mentioned in the original text.</p>	
<p>I- Failure to submit the evidence required by the Department for discharging declarations of goods which are admitted under the suspended duties status provided for in Title Six of this Law.</p>	<p>I- The transport or possession of goods subject to the customs territory judicial police without a legal document.</p>	<p>The text is similar to the text of paragraph (N) of article (204) of the original law, without amendments.</p>	
<p>J- Taking goods from free zones, storehouses or warehouses and into the customs territory without going through the customs formalities.</p>	<p>J- Failure for any reason to re-import goods whose exportation is prohibited or goods which are exported temporarily.</p>	<p>The text is similar to the text of paragraph (O) of article (204) of the original law, without amendments.</p>	

	<p>K- Submitting false documents with the intent of importing or exporting ascertained prohibited goods, prohibited goods or restricted goods or with the intent of distorting the value of imported goods so as to exceed the monetary quotas provided for by the laws in effect.</p> <p>L- Submitting false, forged, or fabricated documents or invoices, or putting false marks on goods with the intent of evading all or part of customs duties or other fees and taxes, or evading the prohibition or restriction provisions of (Article 198/A/2) of this Law .</p> <p>M- The transport or possession of ascertained prohibited goods, or prohibited goods, or restricted goods without presenting evidence that the goods are legally imported.</p> <p>N- The transport or possession of goods subject to the customs territory judicial police without a legal document.</p> <p>O- Failure for any reason to re-import goods whose exportation is prohibited or goods which are exported temporarily.</p> <p>P- Loading or unloading goods to and from trains inconsistently with regulations, in places with no customs houses, or within the customs territory.</p>			
Article 206	Smuggling acts or acts amounting thereto, and attempts thereat shall be subject to the	Article 206:		Article 206 is strengthened to make sure that penalties for smuggling are

	<p>following penalties:</p> <p>A- A fine no less than 50 JDs and no more than 1000 JDs, and for repeaters, imprisonment for a term between one month and three years, in addition to the prescribed fine, or one of the two penalties.</p> <p>B- A customs fine as a compensation for the Department set at:</p> <p>1- Three to six times the value of goods in the case of ascertained prohibited goods.</p> <p>2- Two to three times the value of goods, in addition to the fees and the duties in the case of prohibited or restricted goods.</p> <p>3- Two to four times the amount of duties on goods which are subject to customs duties, and are not prohibited or restricted goods, provided the fine shall not be less than the value of the goods.</p> <p>4- Between 25 -100 JDs for goods which are not subject to duties or taxes, and are not prohibited or restricted goods.</p> <p>C-Confiscation of the smuggled goods, or a fine sentence in the amount equivalent to the value of goods, inclusive of fees, if the</p>	<p>A- Smuggling acts or acts amounting thereto, and attempts as specified in article (203) of this Law shall be subject to the following penalties:</p> <p>1- Imprisonment ranging from one month to three years and a fine no less than JDs 50 and no more than JDs. 1000. Substituting imprisonment by fine and stay of execution provisions mentioned in valid law of penal trials and valid law of penalties do not apply on imprisonment penalty stated in this sub-article.</p> <p>2- A customs fine as a compensation for the Department set at:</p> <p>a) Three to six times the value of goods in the case of ascertained prohibited goods provided that the sentenced customs fine is not less than six times the value of goods in case of repeating committing the crime.</p> <p>b) Two to three times the value of goods, in addition to the fees and the duties in the case of prohibited goods provided that the sentenced customs fine is</p>		<p>not diluted, that higher fines can be levied, and that recidivists receive maximum penalties. These revised penalties apply to both Articles 203 and 204, and will have the effect of increasing substantially the deterrent effect of penalties as well as their immediate punitive effect. This is important as a effective penalty regime is a prerequisite for a self-assessment, post-transaction audit approach to compliance.</p>
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	<p>goods are not seized, or escape seizure.</p> <p>D-A sentence for the confiscation of the means of transport and the tools and materials used in the smuggling, or a sentence to a fine not exceeding 50% of the value of the smuggled goods and not exceeding the value of the means of transport-other than ships, planes, or trains, unless those are especially leased or set up for smuggling- or a sentence to a fine equivalent to the value of the goods if the goods are not seized or escape seizure.</p>	<p>not less than three times the value of goods and fees in case of repeating committing the crime.</p> <p>c) Three to four times the fees not less than the value of goods in the case of restricted or confined goods provided that the sentenced customs fine is not less than four times the fees or twice the value of goods which is more in case of repeating committing the crime.</p> <p>d) Two to four times the amount of duties on goods which are subject to customs duties, and are not prohibited or restricted goods, provided the amount is not less than half of the value, and the fine shall not be less than four times the value of the goods in case of repetition.</p> <p>e) Between 100 -500 JDs for goods which are not subject to duties or taxes, and are not prohibited or restricted goods.</p> <p>3- Confiscation of the smuggled goods, or a fine sentence in the amount equivalent to the value of goods, inclusive of fees, if the goods are not seized, or escape seizure.</p>	<p>The paragraph includes imposing special penalties on acts that are considered acts of smuggling. Such penalties are more mild than penalties of real smuggling, being the judgmental smuggling is</p>	
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		<p>4- A sentence for the confiscation of the means of transport and the tools and materials used in the smuggling, or a sentence to a fine not exceeding 50% of the value of the smuggled goods and not exceeding the value of the means of transport in local market with duties and fees paid other than ships, planes, or trains, unless those are especially leased or set up for smuggling- or a sentence to a fine equivalent to the value of the goods if the goods are not seized or escape seizure.</p> <p>B- Smuggling acts or acts amounting thereto, and attempts thereof stated in article (204) of this law shall be subject to a penal fine between (250 – 1000) JDs as well as other penalties stated in sub-article (2) of paragraph (a) of this article.</p> <p>C- For the purposes of this article, it is considered repetition if the person in charge of smuggling acts or acts amounting to, has committed crimes during the last three years and was sentenced on that. It is also considered repetition all crimes committed during that period and resettlement was reached with the Department.</p>	<p>less serious than real smuggling. Such acts are committed through data submitted to the Department. Penal and customs fines are accepted without including imprisonment and confiscation of goods and means of transport as in the case of real smuggling.</p> <p>This paragraph defines the repetition for the purposes of this article, as this proposed text intensifies the punishment in case of repetition which necessitates defining the term repetition.</p>	
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## ISSUING OF DUTY AND OTHER CLAIMS

<p>Article <b>208</b></p>	<p>A- The Director or a mandatory thereof may issue decisions to claim the duties, taxes and fines which are to be levied by the Department, provided the amounts to be collected are established, and are due on the basis of a guaranteed undertaking, an undertaking of amicable settlement, or a conclusive court decision. The person liable for payment must settle the claim within 30 days from the date of being notified of the decision.</p> <p>B- The Director may issue a decision for collecting the duties fees, taxes and fines if the person liable for payment does not follow up with the Department during the period referred to in paragraph (A) of this Article.</p> <p>C- The person liable for payment may challenge the collection decision before the competent court within thirty days from the date of notification, however this shall not cause a stay of execution unless the person liable for payment provides a deposit or a bank guarantee for at least 25% of the amount due.</p>	<p>Article 208:</p> <p>A- The Director or a mandatory thereof may issue decisions to claim the duties, taxes and fines which are to be levied by the Department, provided the amounts to be collected are established,. The person liable for payment must settle the claim within 30 days from the date of being notified of the decision.</p> <p>No change</p> <p>No change</p>	<p>The proposed text cancels (or a conclusive court decision) being it is not reasonable to issue a claim then a collection order and later object the decision. The term (and are due on the basis of a guaranteed undertaking of amicable settlement) being the claim is subject to objection.</p>	
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## AMICABLE SETTLEMENT

<p><b>Article 213</b></p>	<p>A- In concluding amicable settlements, the Minister or a mandatory thereof may substitute the penalties and customs fines provided for in Article (206) of this Law by the following:-</p> <p>1- A customs fine not less than 50 % of the compensation.</p> <p>2- Confiscating the ascertained prohibited goods or goods whose importation or exportation is prohibited.</p> <p>3- The amicable settlement contract may provide for giving back the seized goods, and collecting the customs duties and other fees and taxes thereupon in return, in the case of goods, which may be imported or exported, and of restricted goods but subject to the approval of the restricting authority's.</p> <p>4- The amicable settlement contract may provide for giving back the means of transport and materials used in the smuggling in return for a fine not less than 20% of the value of the smuggled goods and not exceeding 50% of the value of the means of transport.</p>	<p>Article 213: A- In concluding amicable settlements, the Minister or a mandatory thereof may substitute the penalties and customs fines provided for in Article (206) of this Law by the following:-</p> <p>1- A customs fine not less than 50 % of the compensation. In case of repetition, a fine equivalent minimum to the compensation is imposed.</p> <p>No change</p> <p>No change</p> <p>4- The amicable settlement contract may provide for giving back the means of transport and materials used in the smuggling in return for a fine not less than 20% of the value of the smuggled goods and not exceeding 50% of the value of the</p>	<p>The article is amended to cover the settlement on smuggling crime in case of repetition, and in coherent with article (206).</p> <p>This article is amended to identify the value of means of transport used in smuggling based on the value in local market with duties and fees paid.</p>	<p><u>Article 213</u> provides an alternative to Article 206, in that it provides for amicable settlement of a customs claim (a practice which is consistent with the Kyoto Convention). The changes to Article 213 are essentially minor, dealing with recidivists and with valuing means of transport for compensation purposes) but it is important that the Article be retained to provide Customs with greater flexibility in dealing with non-compliant traders.</p>
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	B- A guide for amicable settlements shall be issued by the Minister and shall be published in the Official Gazette.	means of transport in local market with duties and fees paid. No change.		
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## LIABILITY OF BROKERS FOR ACTS OF EMPLOYEES

Article 218	Offenses in customs declarations, whether committed by the agent or by authorized employees thereof shall be the agents liability. Offenses which lead to a smuggling crime shall be adjudicated, and liability therein determined by court. The Customs clearance agent shall not be liable for the undertakings incorporated in the customs declaration unless the Agent guarantees the undertakings or acts as surety for the guarantors.	Article 218: Clearance agents shall be liable in full for offenses and smuggling crimes that are committed by their authorized employees. Whereas clearance agents shall not be liable for the undertakings incorporated in the customs declaration unless the Agents guarantee the undertakings or acts as surety for the guarantors.	According to this text liability of customs clearance agents has increased to cover in full offenses and smuggling crimes committed by authorized employees. The custom clearance agent and his employees are not supposed to commit crimes related to the profession of customs clearance which is closely linked with Customs Department.	<u>Article 218</u> provides that a clearance agent is to be held liable for the offences committed by his employees. This strengthens the law as it applies to brokers, because it means that they are expressly liable for smuggling offences, and not just of misdeclaration, where their employee has been acting unlawfully (previously, it was up to a court to determine whether the broker was liable in those circumstances). This clearly poses a higher legal duty on the broker to ensure that his staff acts in accordance with the Law. (See also comments below on joint and several liability.)
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## POWERS OF COURT OF FIRST INSTANCE

Article 222	A- A special court named "The Customs Court of First Instance " shall be formed, and shall be composed of a panel of number of judges (chief and members) appointed by the Judicial Council.  B- The Customs Court of First Instance is specialized to hear in the following: (1-6)  7- Release of confiscated goods of cases	A- No change   Specializations of the court remained the same as mentioned in paragraphs 1-6  7- Release of confiscated goods of cases	The text is amended to include the submitted guarantee presented for the sake of release of goods as a guarantee to duties, fees and	Housekeeping provision.
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	heard, in exchange of submission of a bank guarantee of same value of goods in addition to the release of confiscated means of transport after property attachment at concerned authorities.  C & D	heard, in exchange of submission of a bank guarantee of same value of goods in addition to the release of confiscated means of transport after property attachment at concerned authorities.  No change	value to preserve rights of the treasury.	
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## **Annex B: FINAL ATTENDANCE LIST**

### **"Customs Legislation workshop"**

09/Feb/2005

AMIR Program, Amman

Number of Trainees by Gender:

*Women:* 0

*Men:* 5

Total Number of Event

*Total:* 5

Guest Name	Company Name	Business Phone
♦ Jawdat Al-Bazlameet	Customs Department	4623186 ext: 2202
♦ Mohammad Al-Jaloudi	Customs Department	4623186 ext:2321
♦ Salah Al-Maghairah	Customs Department	4623186 ext:2331
♦ Firas Al-Momani	Customs Department	4623186 ext: 2327
♦ Nabil Rajha	Customs Department	